IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 25216 of 2007(B)

E.OP.1/2007 of MUNSIFF COURT, CHALAKUDY

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PETITIONER:

MOLY THOMAS, AGED 42 YEARS,
W/O. K.V. THOMAS, KAVUNGAL HOUSE,
VELLIKULANGARA, THRISSUR.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

CLARA JOHNEY, W/O. JOHNEY,
KOTTAKKAL HOUSE, VELLIKULANGARA, THRISSUR DIST.

BY ADV. SRI.T.N.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).25216/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE ELECTION PETITION E.O.P.10/05 OF MUNSIFF COURT, CHALAKKUDY

EXT.P2- TRUE COPY OF THE ORDER IN E.O.P.10/2005 DATED 10.7.07

EXT.P3- TRUE COPY OF THE DECISION REPORTED IN 2003 (3) KLT PAGE 343 AND 435

(TRUE COPY)

P.A TO JUDGE

M.N.KRISNAN, J.

W.P.(C).25216/2007

Dated this 12th day of September, 2007

JUDGMENT

This writ petition is filed seeking to quash Ext.P2 order. On the basis of an order passed by the District Judge, Thrissur, the Election Petition 10/2005 has been transferred from the Munsiff Court, Chalakkudy to Principal Munsiff Court, Irinjalakkuda. The first respondent in the Election Petition has challenged this order on the ground that the District Judge cannot pass such an order of transfer for the following reasons. The learned counsel brought to my notice Section 88 of the Kerala Panchayat Raj Act, 1994 and also a decision of this Court reported in (**2003 (3) KLT 343)**. While discussing the matter, the learned Judge of this Court held that Section 88 of the Panchayatraj Act confer the jurisdiction over the Munsiff's Court to try all election disputes for which two conditions must be satisfied namely

(a). The Munsiff Court must be having jurisdiction over the place in which the headquarters of the Panchayat is located.

(b). The Government must have issued the notifications as contemplated under Section 88(2) of the Panchayat Raj Act.

2. So the Court which is having jurisdiction over the place in which the headquarters of the Panchayat is located coupled with a notification by the Government in consultation with the High Court alone will be competent to decide the election petitions filed under the Act. Section 24 of CPC cannot be invoked in the light of the stringent provisions under Section 88. Therefore, the order passed by the learned District Judge on the administrative side transferring the case from Chalakkudy to Irinjalakkuda is per se incorrect and therefore, it is cancelled. Now the parties have to get their grievance remedied and therefore, unless it is such a personal ground which disables the Munsiff, Chalakkudy to hear the matter, it is desirable because as both the counsel appearing here submitted that they have no objection for the same Munsiff hearing the matter and passing final orders. If it is done then

further difficulties may not arise. If the Munsiff still feels difficulty, then I direct her to send a report to the Registrar (Subordinate Judiciary), on the administrative side because a notification in consultation with the High Court by the Government, as contemplated under Section 88(2) of the Act, may have to be obtained before ordering transfer in such cases.

3. So the writ petition is allowed. The Munsiff Court, Irinjalakkuda, is directed to re-transfer the case to the Munsiff, Chalakkudy and she is directed to proceed or report in accordance with the suggestions made by this Court in the previous paragraph.

M.N.KRISHNAN,
JUDGE

mrcs